for her in her deceased husband's will and demand her dower, only provides how a widow must proceed who desires to reject the provision made for her by her husband's will out of property other than her own; and, where a husband disposes of his wife's property and makes a provision for her by his will, she has the same right of election as any other person.

3. Same—Election by Widow.—A husband disposed, by his will, of land belonging to his wife and also made provision for her. After his death and before the probate of his will she conveyed the property to a purchaser with covenants of general warranty. Held, that the wife elected to claim the land as her own by title paramount to the will, and her purchaser acquired a good title.

4. Specific Performance—Contract to Purchase Realty—Decree.—A decree of specific performance of a contract for the sale of land should comply with the terms of the contract, and the purchaser should not be required to purchase without being given the privilege of executing a deed of trust to secure the price unpaid, as authorized by the contract.

LANE BROS. & CO. *v.* BOTT.

Nov. 23, 1905.

[52 S. E. 258.]

1. Appeal—Improper Admission of Evidence—Harmless Error.—The general rule that the improper admission of evidence which may have been prejudicial, though it is doubtful whether it was or not, constitutes reversible error, is subject to the exception that if in such case there is a demurrer to evidence, and an alternative verdict, the admission of illegal evidence will not reverse, where, under the rules governing demurrers to evidence, the remaining evidence suffices to sustain a judgment for the demurree.

2. Trial—Demurrer to Evidence—Effect.—Where, in an action for personal injuries, the evidence as to plaintiff's alleged contributory negligence is conflicting, and defendant, by demurring to the evidence, withdraws that question from the consideration of the jury, the court must find plaintiff not guilty of contributory negligence, if the jury might have so found.

3. Master and Servant—Injuries to Servant—Explosion of Blast in Rock Quarry—Contributory Negligence.—Where plaintiff, a quarry employee, during whose absence a hole for blasting was loaded, and who on his return was told by the superintendent, in response to his direct inquiry, that it was unloaded, was injured by an explosion while attempting to drill out the hole, in compliance with the superintendent's orders, he was not guilty of contributory negligence, as he had a right to rely on the superintendent's assurance, without employing

precautions which ordinary prudence might otherwise have suggested.

[Ed. Note.—For cases in point, see vol. 34, Cent. Dig. Master and Servant, §§ 675-677.]

4. Damages — Personal Injuries — Excessive Damages. — Where plaintiff, a quarry employee, had his left hand broken and otherwise injured, his face cut and burned with powder, and a section of his teeth knocked loose, his wage-earning capacity being reduced from $1.25 to $1 per day, a verdict of $1,205 was not excessive; there being no pretense that the jury was actuated by prejudice or partiality.

NORFOLK & W. RY. CO. *v.* SPENCER'S ADM'X.

Dec. 7, 1905.

[52 S. E. 310.]

1. Evidence—Mortality Tables.—In an action for death, standard mortality tables are admissible to show the probable expectancy of the life of deceased.

[Ed. Note.—For cases in point, see vol. 17, Cent. Dig. Death, § 84; vol. 20, Cent. Dig. Evidence, § 1520.]

2. Negligence—Action—Instructions—Contributory Negligence.—The court instructed that, although plaintiff's intestate might have been guilty of negligence, and although that negligence might in fact have contributed to the accident, yet, if defendant could, in the result, by the exercise of ordinary care and diligence, have avoided the accident, plaintiff's negligence would not excuse defendant. Held, that the instruction was proper in form.

[Ed. Note.—For cases in point, see vol. 37, Cent. Dig. Negligence, §§ 115, 392.]

3. Master and Servant—Injuries—Negligence—Evidence—Sufficiency.—In an action for the death of a locomotive engineer in a collision between his train and another, evidence held sufficient to warrant a finding that the engineer of the other train could have moved his train after knowledge of the danger, so as to have avoided the accident.

4. Same—Question for Jury.—In an action for the death of a locomotive engineer in a collision between his train and another, held, that it was a question for the jury whether the conductor of the other train was guilty of negligence in having his train standing beyond the limits prescribed by an order.

5. New Trial—Grounds—Discrediting Opposite Witness.—As a general rule, a new trial will not be granted to enable the moving party to discredit an opposite witness.

[Ed. Note.—For cases in point, see vol. 37, Cent. Dig. New Trial, §§ 221-223.]

6. Master and Servant—Negligence—Evidence—Sufficiency.—In an